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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
NO. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,
Plaintiff

vs.
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•
CATERPILLAR, INC.,
Defendant

AUDIO-VISUAL DEPOSITION OF RALPH A. LIND, JR., a witness called by and on behalf of the Defendant, pursuant to the provisions of the Federal Rules of Civil Procedure, before Heather S. Cruz, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Campbell, Campbell, Edwards and Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, May 10, 2005, commencing at 9:37 a.m.

C.J. REPORTING
AS Colonial Drive, Unit No. 7
Andover, Massachusetts 01810
(978) 409-9090/fax (978) 409-9091
www.cjreporting.com

PROCEEDINGS
THE VIDEOGRAPHER: We are now on the record.
The date is May 10, 2005. The time is approximately
9:37 a.m.

We are located at the offices of Campbell, Campbell, Edwards and Conroy in Boston, Massachusetts. The Defendant in the case of Trans-Spec Truck Services, Incorporated, d/b/a Truck Service versus Caterpillar, Incorporated, Civil Action No. 0411836 RCL.

We will now take the audio-visual deposition of Mr. Ralph Lind. My name is William Barton of In Court Technologies, Boston, Massachusetts, and I am the videographer for this deposition. The stenographer is Heather Cruz of C.J. Reporting.

At this time the attorneys will introduce themselves for the record.

MR. GRUNERT: My name is John Grunert with the firm of Campbell, Campbell, Edwards and Conroy. I represent the Defendant, Caterpillar, Inc.

MR. SAMITO: Christian G. Samito of Donovan Hatem, LLP. I represent the deponent, Mr. Lind, and the Plaintiff, Trans-Spec Truck Service.

THE VIDEOGRAPHER: The stenographer will now swear in the witness.

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1 APPEARANCES:
2 DONOVAN HATEM, LLP
By Christian G. Samito, Esquire
3 Two Seaport Lane
Boston, Massachusetts 02210
4 On behalf of the Plaintiff
5 CAMPBELL, CAMPBELL, EDWARDS & CONROY
By John A.K. Grunert, Esquire
6 One Constitution Plaza
Boston, Massachusetts 02129
7 On behalf of the Defendant
8 Also Present: William Barton, Videographer
In Court Technologies
One Constitution Plaza
Boston, Massachusetts 02129

10 Also Present: Joseph Howard

1 RALPH A. LIND, JR., having been
2 satisfactorily identified by a Massachusetts driver's
3 license and duly sworn by the Notary Public, was
4 examined and testified as follows:

5 MR. GRUNERT: The parties have agreed that
6 we're going to have the usual stipulations, except that
7 the witness is going to read and sign the transcript.
8 So objections except to the form of the question are
9 reserved until the time of trial. Motions to strike
10 are reserved until the time of trial. Notarization of
11 the witness' signature is waived.

12 EXAMINATION BY MR. GRUNERT:

13 Q State your full name, please, sir.
14 A Ralph Andrew Lind, Junior.

15 Q Have you had your deposition taken before?
16 A I don't know. I don't think so. Not for this, but.
17 Q Have you had the misfortune on any earlier occasion to
18 sit in a room like this with a stenographer and have
19 attorneys question you under oath and have your
20 testimony taken down stenographically?

21 A Yes.

22 Q What was the occasion for that?

23 A I don't remember.

24 Q Was it --

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2 DEPOSITION OF RALPH A. LIND, JR.
3 Page
4 Examination by Mr. Grunert 4, 139
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EXHIBITS

6 Nos. For I.D.
7 1 Driver's Vehicle Inspection Report 25
8 dated 10/17/03
9 2 Repair Order and Invoice dated 6/3/03 28
10 3 Preventive Maintenance Inspection
Report dated 1/27/03
11 4 A Service Sheet dated 9/18/03 29
12 5 B Service Sheet dated 3/07/03 30
13 6 Invoice No. 65992 74
14 7 Invoice No. 98663 87
15 8 Invoice No. 88088 87

1 A It was something to do with a driver a long time ago
for Truck Service.
2 Q This was a case in which you were not a plaintiff or a
3 defendant, you were a witness testifying in a case that
4 somebody else had brought?
5 A Yes.
6 Q Do you remember who the plaintiff in that case was?
7 A No.
8 Q Do you remember who it was who took your deposition?
9 A No.
10 Q Were you represented by an attorney at that deposition?
11 A I don't remember. It was years ago.
12 Q What's your address?
13 A 2 Mason Road, Milbury, Mass.
14 Q Are you married?
15 A Yes.
16 Q Children?
17 A Yes.
18 Q Are you employed?
19 A Yes.
20 Q Who is your employer?
21 A London Taxis of North America.
22 Q When you go to work in the morning, where do you go?
23 A Sudbury, Massachusetts.

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EXHIBIT

tabbies

Exhibit P

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1 serviceability. How easy was it to work on the truck.
 2 Because the truck is down for as long as it needs to be
 3 serviced. So the faster you can get it fixed and back
 4 on the road or serviced and back on the road is what I
 5 was concerned with.

6 **Q Okay. Were there particular characteristics of these**
 7 **trucks that you were concerned with from a perspective**
 8 **of serviceability? Were there particular features that**
 9 **you told Mr. Medbery you needed on these trucks in**
 10 **order to make them adequately serviceable for what you**
 11 **knew Trans-Spec's needs were?**

12 A As far as features, no. Component locations, yes.

13 Q Okay. And were there specific components that you were
 14 concerned about?

15 A Yes.

16 Q Which specific components were you concerned about?

17 A Battery location. Battery and cable location. Air
 18 drier. Fuel filter location. Basically all the
 19 service needs. Everything that required a basic which
 20 on the A Service Sheets. Every component that had to
 21 be checked on and serviced, I was concerned with where
 22 it was located and its accessibility to a technician.

23 My specifications weren't based on that sheet
 24 you got in your hand.

1 Q Were there some power take-offs? How many power
 2 take-offs from the transmission on these trucks were
 3 there?
 4 A Depended on the truck.
 5 Q So on these 22 Sterling trucks, some of them had more
 6 power take-offs than others?
 7 A Some had two, some only had one.
 8 Q Do you know why some had two while some only had one?
 9 A Because some trucks did multiple duties. They worked
 10 on dump trailer and tanker.
 11 Q So the ones that had tanker plus dump trailer had two
 12 power take-offs?
 13 A Yes.
 14 Q Do you remember which trucks it was that had two power
 15 take-offs?
 16 A No.
 17 Q Do you remember how many of the trucks were used for
 18 those dual purposes as distinct from just delivering
 19 fuel?
 20 A No.
 21 Q The trucks that were equipped to handle a dump trailer,
 22 do you know about how much of their time was spent
 23 hauling aggregate or other material in a dump trailer
 24 as contrasted with hauling fuel?

1 A No, I don't. I didn't dispatch the trucks so I didn't
 2 know what they were doing.
 3 Q Were the trucks that were equipped to handle a dump
 4 trailer used for that purpose more during the warm
 5 months than during the winter months?
 6 A Yes.
 7 Q Were they used for that purpose principally during the
 8 warm months?
 9 A Dump trailer, yes. Mostly in the summer.
 10 Q Okay. My question was pretty unclear. The trucks that
 11 were equipped to handle a dump trailer, during the
 12 summer months, was hauling aggregate and other material
 13 in a dump trailer what they were mostly used for during
 14 the summer?
 15 A Yes.
 16 Q And then during the winter months they would be
 17 switched over to fuel delivery?
 18 A To tanker. Yes.
 19 Q You mentioned early on when we were talking about the
 20 documents that you prepared, you mentioned weight slips
 21 or overweight slips?
 22 A Yes.
 23 Q And I take it that you also filled out other paperwork
 24 for various types of permits that were necessary for

1 **hauling?**
 2 A Fire marshall permits. Numerous permits, yes.
 3 Q Where were -- where would those types of documents be
 4 kept at Trans-Spec?
 5 A Copies of them were in my desk or in my filing cabinet
 6 in my office. And the original was kept with the
 7 truck. Or a copy was with the truck and one was kept
 8 at the registry or whoever issued the permit; fire
 9 department, registry, so on.
 10 Q As the years passed, would those various permits and
 11 slips of various types, documents, would they be stored
 12 somewhere at Trans-Spec?
 13 A I think I only kept them for a year. Because I would
 14 copy them over for the next year and make any changes I
 15 needed to be done and then throw the other ones away.
 16 Q So as they expired?
 17 A Threw them away.
 18 Q You just dump them?
 19 A Yes. Dump the ones in the truck. I don't know if I
 20 actually got rid of the ones that I had in my office.
 21 Q Okay. When Trans-Spec's trucks were hauling aggregate
 22 or asphalt or various materials that were hauled in the
 23 dump trailers, would scale tickets be generated in
 24 order to determine how much material had been

1 Q In connection with specing the Sterling trucks involved
 2 in this case, did you have any conversations with
 3 Mr. Cardoza from Southworth-Milton?
 4 A Some conversations I believe.
 5 Q What conversations did you have with Mr. Cardoza in
 6 connection with specing these trucks?
 7 A I don't know if it was actually in specing the trucks,
 8 more as it was the ability of the engine as far as
 9 horsepower and torque ratings.
 10 Q Tell me what you remember about the conversation or
 11 conversations you had with Mr. Cardoza in connection
 12 with these Sterling trucks.
 13 A I don't really remember specific conversations. I know
 14 we talked about the engines. Their ability. The
 15 horsepower ratings. The torque ratings. What they
 16 were suppose to be able to do. I don't remember the
 17 actual conversations.
 18 Q Other than the torque ratings and the horsepower
 19 ratings, what do you remember Mr. Cardoza telling you
 20 about what the engines were suppose to be able to do?
 21 A I don't. I don't remember.
 22 Q So what you remember of getting from him is torque
 23 ratings, horsepower?
 24 A Uh-huh. Yes.

<p>1 Q And you remember that you talked with him about other things, but you simply don't recall what was said?</p> <p>2 A Correct. I talked to Al a lot and about many different things, and I can't remember what we talked about.</p> <p>3 Q Did you talk with anyone other than Mr. Cardoza from Southworth-Milton during the process of specing out the Sterling trucks?</p> <p>4 A No.</p> <p>5 Q Did you talk with anyone from Caterpillar in the process of specing out these trucks?</p> <p>6 A Not that I remember. No.</p> <p>7 Q What discussions do you remember having with Mr. Howard in the process of specing out these trucks?</p> <p>8 A We talked a lot about the trucks and what he thought. These trucks were suppose to be the last truck, the right truck for our job. And we spent a lot of hours talking about many things. Drive shafts and rear axles. The engine in particular. We thought it was the right engine. The cab design. The doors. Mirrors. Everything. We talked about a lot of things. Cruise control.</p> <p>9 Q When you spoke -- when you spoke with him about the rear axil, what was the discussion on that subject?</p> <p>10 A Well, we had Rockwell rear axles in our Freightliners</p>	<p>Page 67</p> <p>1 Q Dick Witcher.</p> <p>2 A Minuteman Trucks.</p> <p>3 Q Do you remember who was there from Sterling?</p> <p>4 A I don't know his name. I could picture the guy but I don't know his name.</p> <p>5 Q Did you make any notes at that meeting?</p> <p>6 A No, sir.</p> <p>7 Q What was the purpose of that meeting?</p> <p>8 A We were going to see the truck come off the line and make any changes at the end of the line that we thought would benefit serviceability of the vehicle.</p> <p>9 Q So you actually saw a truck that met the specifications that Trans-Spec had given Sterling, you actually saw a truck of that type fully assembled?</p> <p>10 A We saw a truck that they thought would meet our specifications. I believe it was one of our trucks.</p> <p>11 Q And did you inspect it after it came off the end of the assembly line?</p> <p>12 A Yes.</p> <p>13 Q Did you have any changes that you requested?</p> <p>14 A Yes.</p> <p>15 Q What changes did you request?</p> <p>16 A Air drier location. That I remember specifically. I believe battery location and battery cable length.</p>	<p>Page 70</p>
<p>1 which were an all-wheel drive. They had an inter-axle lock and we decided -- he decided that to go with an anti-lock braking traction control system or something to that effect, and it was a simple conversation as to eliminating the axil lock on the Sterlings because we saw what kind of damage they could do in the Freightliners when the driver didn't know how to use it. So specifically. And stuff like that.</p> <p>2 Q What do you remember talking with him about so far as the drive line was concerned?</p> <p>3 A I know he chose to go with a Spicer. I believe a Spicer drive line over the Rockwell drive line or the Meritore drive line because of Merko Bigward's recommendations.</p> <p>4 Q Because of?</p> <p>5 A Merko Bigward. A Meritore rep. He didn't recommend his drive line. He recommended actually his competitor.</p> <p>6 Q And the person's name is Merko Bigward?</p> <p>7 A Yes.</p> <p>8 Q Is Merko Bigward the person that Jay Howard dealt with in connection with choosing a Meritore transmission?</p> <p>9 A Possibly.</p> <p>10 Q Do you know where Mr. Bigward operates out of?</p>	<p>Page 68</p> <p>1 Keep going back to those because I remember those specifically were one of my complaints.</p> <p>2 Q Were there any other changes that were requested either by you or by Mr. Howard?</p> <p>3 A I don't remember any others.</p> <p>4 Q Were there any particular features of the trucks that Trans-Spec had ordered that were discussed at that meeting other than the air drier location and the battery location and the battery cable length?</p> <p>5 A I don't remember.</p> <p>6 Q Was there any discussion of the engine?</p> <p>7 A Not that I can remember. No.</p> <p>8 Q Was there any discussion about the transmission?</p> <p>9 A Again, not that I can remember.</p> <p>10 Q Was there any discussion of the design of the frame?</p> <p>11 A I don't know. Might have been. See, I was more concerned with the serviceability of the vehicle. I don't know what he talked about. I didn't discuss with anybody anything other than the serviceability of the truck and what I thought would make it easier for me to service. You're getting into components, and I wasn't involved in the components per se.</p> <p>12 Q There was no discussion of fly wheels or fly wheel housing, I assume?</p>	<p>Page 71</p>
<p>1 A No. I don't think he's our rep anymore in Massachusetts.</p> <p>2 Q Did you accompany Mr. Howard to a meeting up in Saint Thomas, Ontario concerning these trucks?</p> <p>3 A Yes, I did.</p> <p>4 Q Is that the only meeting that you attended with Sterling representatives in connection with specing these trucks?</p> <p>5 A The only meeting. I believe it is. I don't remember any others.</p> <p>6 Q Apart from that meeting, did you talk with any people from Sterling concerning these trucks during the process of specing them?</p> <p>7 A Other than Don Medbery?</p> <p>8 Q Don Medbery works for Minuteman, right?</p> <p>9 A Sterling. Not that I'm aware of.</p> <p>10 Q How long did you spend in Ontario with Sterling?</p> <p>11 A I believe we were there two days. I'm not 100 percent sure.</p> <p>12 Q Was anyone from Southworth at that meeting?</p> <p>13 A I don't remember.</p> <p>14 Q Was anyone from Caterpillar at that meeting?</p> <p>15 A I don't remember. I remember me, Jay, Don Medbery and I believe Dick Witcher.</p>	<p>Page 69</p> <p>1 A Not by me.</p> <p>2 Q Not that you remember?</p> <p>3 A Correct.</p> <p>4 MR. GRUNERT: I'm going to show him this document.</p> <p>5 MR. SAMITO: Is it in this packet that you gave me?</p> <p>6 MR. GRUNERT: Yes, it is.</p> <p>7 MR. SAMITO: Do you know where, so I could follow along?</p> <p>8 MR. GRUNERT: Probably right on top.</p> <p>9 MR. SAMITO: Okay.</p> <p>10 THE VIDEOGRAPHER: Could I change tapes at this time?</p> <p>11 MR. GRUNERT: Sure. This is a good time.</p> <p>12 THE VIDEOGRAPHER: The time is approximately 11:28. We are off the record for a tape change.</p> <p>13 (Off the record.)</p> <p>14 THE VIDEOGRAPHER: We are on the record. The time is approximately 11:29.</p> <p>15 Q Mr. Lind, let me show you a sample document from a mound of documents that I recently obtained from Minuteman Trucks.</p> <p>16 As a result of your work at Minuteman Trucks,</p>	<p>Page 72</p>

1 I don't remember, I didn't know that was dropped off by
 2 Colony, but we did have a truck dropped off that we
 3 examined and I went over that truck.
 4 **Q Do you remember -- you don't remember who dropped it**
 5 **off?**
 6 A I don't.
 7 **Q But an AT-9513 was dropped off at some point?**
 8 A Yes.
 9 **Q And you examined it?**
 10 A Yes, I did.
 11 **Q What did you think of it?**
 12 A I thought it was a nice truck, one that we could use.
 13 **Q Do you remember what kind of engine it had?**
 14 A It had a -- I think it had a C-12 in it.
 15 **Q Did you examine the engine?**
 16 A Yes, I did.
 17 **Q What did you think?**
 18 A I thought it was, again, I thought it was the right
 19 engine. It looked like -- that truck looked like
 20 something we could work with. It would do what we
 21 wanted.
 22 **Q Did you have any complaints about the engine or the**
 23 **AT-9513 that you examined?**
 24 A Minor cosmetics and component locations like I stated

1 earlier in the -- where some things were located on the
 2 truck I didn't particularly care for. Air driers, oil
 3 filters, the battery box locations. But as far as the
 4 layout of the truck, I thought it was good.
 5 **Q Who is Don Medbery?**
 6 A I believe he's a salesman -- he was a salesman for
 7 Minuteman Trucks.
 8 **Q When did you first meet Mr. Medbery?**
 9 A Sometime during the specing, potential purchasing of
 10 the Sterlings.
 11 **Q Did he speak to you or?**
 12 A I spoke to Don quite a few times. I've even been to
 13 his house and worked on some of his computers, so.
 14 **Q What did Mr. Medbery tell you specifically regarding**
 15 **Trans-Spec's truck purchase, outside of the computer**
 16 **conversations, but focused on the truck purchase?**
 17 A I only remember him saying he was the salesman for
 18 Minuteman Trucks and he was potentially selling the
 19 trucks to us. And he basically stopped by our lot for
 20 just to let us know he was still around and -- I don't
 21 remember a lot of the conversations I had with him. I
 22 basically tried to avoid him.
 23 **Q Did Al Cardoza make any representations concerning the**
 24 **suitability of the C-12 for Trans-Spec's business**

1 **applications?**
 2 A Al Cardoza, yes.
 3 **Q What were those representations?**
 4 A As far as the C-12s, he had computer programs that
 5 showed printouts of what the engine was capable of
 6 doing. He could do drivability chart or graph of the
 7 way that the engine would perform in certain
 8 conditions.
 9 **Q Was it a Caterpillar specing program that he used?**
 10 A I believe it was something like that. I don't know
 11 exactly.
 12 **Q And did he show you printouts?**
 13 A Yes.
 14 **Q Did you view the printouts?**
 15 A Yes.
 16 **Q Did you see him input the data?**
 17 A Yes. We tried -- he was in my office with the laptop
 18 on numerous occasions changing transmission final drive
 19 ratios, rear axil ratios, imputing different data to
 20 come up with different startability of the trucks, how
 21 it would take off from a dead stop with a load and
 22 certain road conditions. Degraded the road and stuff
 23 like that.
 24 **Q Did he show you based on that program that the C-12 was**

1 **suitable for Trans-Spec's business purposes?**
 2 MR. GRUNERT: Object to the form.
 3 **Q You can answer.**
 4 A Yes.
 5 **Q Did Mr. Cardoza show you that the C-12 was suitable for**
 6 **80,000 gross commercial weight vehicles in New England?**
 7 A 80,000 vehicles?
 8 **Q 80,000 gross commercial weight vehicle.**
 9 A The gross commercial weight rating, yes.
 10 **Q What did Al Cardoza say about serviceability of the**
 11 **trucks?**
 12 A I don't remember talking to him about serviceability.
 13 I knew how to service a truck, so I didn't really talk
 14 to him about stuff like that.
 15 **Q Well, you said earlier that that was one of the main**
 16 **concerns that you had in terms of serviceability of the**
 17 **engines. Did you discuss that at all with Al Cardoza?**
 18 A No.
 19 **Q You didn't. Okay. Do you recall what sort of data the**
 20 **documents showed?**
 21 A The computer printouts. It was a graph type document
 22 that printed out -- had line graphs that would show --
 23 on one side it had horsepower ratings and then grades
 24 of the road and then the line would go -- it was just a

1 basic graph that showed you how the truck would react
 2 to certain conditions. Or the engine, not the truck.
 3 **Q How long did you spend with Mr. Cardoza plugging in**
 4 **these various conditions?**
 5 A In total, I have no idea.
 6 **Q Did it happen at one meeting or was it --**
 7 A No. No. No. It was done it a few times. When Jay --
 8 when Al would print something out, I would tell Jay
 9 what Al come up with and he would try different final
 10 drive ratios, transmissions. We were also going for
 11 fuel mileage, so axil ratios meant a lot. How the
 12 truck would take off with a load, but it also had to
 13 get to the right road speed. So it was a lot of
 14 variables.
 15 **Q Earlier you spoke about a trip to Canada and an**
 16 **examination of the Sterling factory when the trucks**
 17 **were being built. Did you meet any Caterpillar**
 18 **employees during that visit?**
 19 A I don't remember a CAT employee.
 20 **Q Okay. I would like to show you a document to mark.**
 21 MR. SAMITO: I'll show it to you. I don't
 22 have another copy of that.
 23 MR. GRUNERT: I've got the original. Do you
 24 want to just refer to the deposition --

1 MR. SAMITO: We can. Yeah. From -- I assume
 2 that you had it.
 3 MR. GRUNERT: Rather than mark it.
 4 MR. SAMITO: That would be fine if we use
 5 that.
 6 MR. GRUNERT: This is an exhibit that --
 7 actually several exhibits that were marked at the first
 8 day of Mr. Howard's deposition.
 9 THE WITNESS: Okay. Yes.
 10 **Q If you could turn to the -- you'll see that the -- it's**
 11 **marked Exhibit 4 Howard deposition. The first page is**
 12 **a cover letter from me to Attorney Howe. If you look**
 13 **at the third page. Do you recognize this document?**
 14 A Yes.
 15 **Q What is this document?**
 16 A It's an extended -- it's a warranty basically.
 17 Extended service coverage warranty document.
 18 **Q When did you first see this document?**
 19 A As far as the date, I don't remember when I saw it.
 20 **Q But have you seen it before today?**
 21 A Yeah. I signed it.
 22 **Q Where did you sign it?**
 23 A Down on the lower left-hand corner. That is my
 24 signature.